Funding U.S. Military Operations

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Judge Advocate General's School

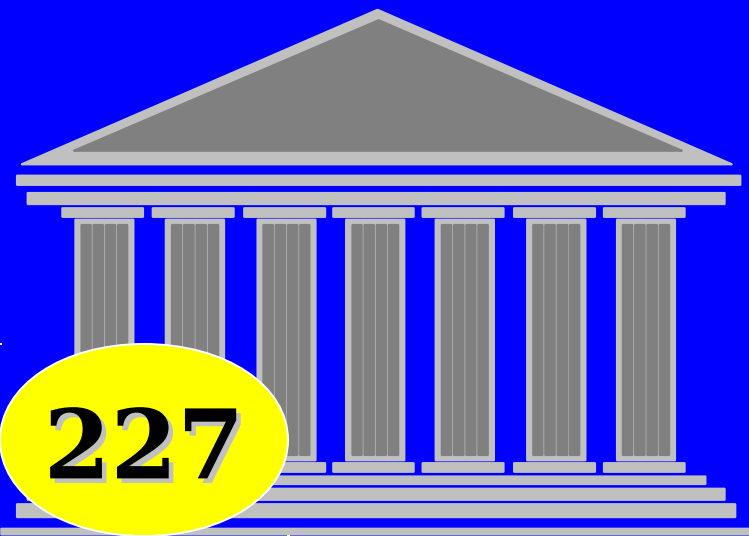
Intro to the Intro!

- What will we cover?
- Basic Fiscal Law Rules
- Operational Funding
  - Operational Funding Environment
  - Support to Allies
  - Humanitarian Operations

"THE FISCAL PHILOSOPHY"

THE SUPREME COURT

"The established rule is that the expenditure of public funds is proper only when authorized by Congress, NOT that public funds may be expended unless prohibited by Congress."



United States v. MacColl
426 U.S. 317, 321 (1976

USE OF APPROPRIATED FUNDS

Analyzing A Fiscal Law Problem

Purpose

Time

Amount

Purpose Rule

General Rule: Use Money as Congress Intends

Necessary Expense

Common Issues

- O&M Construction
- O&M Computer System
- O&M HCA/HA

WHAT COLOR OF MONEY?

How to Determine Purpose

- O&M
- PERSONNEL
- RDT&E
- PROCUREMENT
- MILCON

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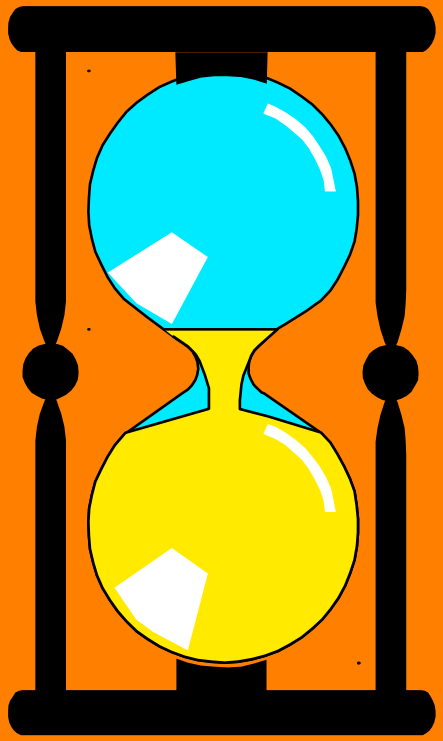
TIME LIMITATIONS

Are We Using "Current" Money?

- O&M -- 1 YR
- PERSONNEL -- 1 YR
- RDT&E -- 2 YRs
- PROCUREMENT -- 3 YRs
- NO YEAR MONEY

TIME LIMITATIONS

Are We Using "Current" Money?



RULE:

An Appropriation Must Be Obligated During Its Period of Availability and the Obligation Must Be a "Bona Fide Need" of That Period

LIMITATIONS ON AMOUNT

- System of Contro
- Ensure Agencies Stay Within Limits
- Formal/Informal Subdivisions

ANTIDEFICIENCY ACT

Means of Enforcement

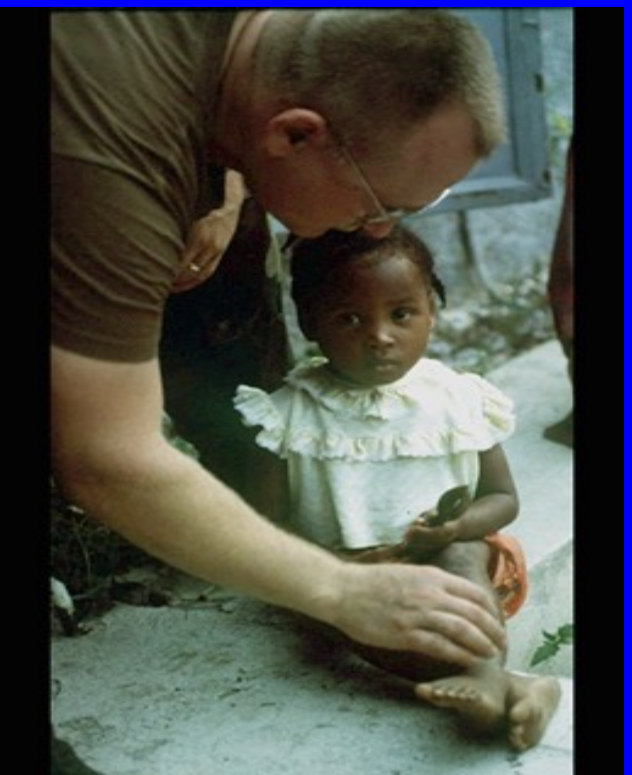
- Investigation Requirements
- Reporting Requirements
- Determining Responsibility

The Traditional Approach

- **"The Law of War recognizes that the business of the military in war is killing people and breaking things."**
- ***Legal Advisor to the Chairman***

The New Reality

- “It seems to me that killing people and breaking things has given way to feeding people and fixing things.”



- Legal Ac
JCS 199

THE PAST TWO YEARS

- Kosovo
- Earthquakes -- Turkey
- East Timor
- Floods -- Venezuela
- Floods -- Mozambique
- Sierra Leone
- Earthquakes -- El Salvador
- Earthquakes -- India

THE POLITICAL ENVIRONMENT

- Tension Between Executive and Legislative Branches
- Scarce Resources
- Competition Between Executive Departments
- Increased Demands on DoD

CONSTITUTION AL PREDICATE

- **Presidential Power, Article II, U.S. Const**
  - **Commander in Chief**
  - **Chief Diplomat**
- **Congressional Power**
  - **Power of the Purse**
  - **Regulation of Property**
  - **Rules and Regulations for the Armed Forces**

THE DOD ENVIRONMENT

- **Scarce Resources**
- **Goldwater-Nichols: 10 USC 164 & 165**
- **Service Responsibilities: 10 USC 3013**
- **Increased Demands on DoD Components**
- **Result:**
  - **Tension and Dispute over Fiscal Law Issues**
  - **Opportunity Costs for Every Decision**

CINC RESPONSIBILITIES

- Give Authoritative Direction Necessary to Accomplish Assigned Missions to Subordinate Cmds, including All Aspects of Mil Ops, Jt Tng, and Logistics [10 USC 164]
- Organize Commands and Assigned Forces to Carry Out Assigned Missions
- Coordinate and Approve Aspects of Administration, Discipline and Support Necessary to Carry Out Assigned Missions
- Define Budgeting Priorities via Integrated Priorities List, CINC's Assessment, and Strategic Priorities [10 USC 166, JCS Pub 2]

SERVICE RESPONSIBILITIES

- Recruit, Organize, Supply, Equip, Train, Service, Mobilize, Demobilize, Administer, and Maintain Service Forces [10 USC 3013, 5013, 8013]
- Formulate Policies and Issue Directives
- Plan, Program, and Budget to Carry Out National Security Objectives and Satisfy CINC's Operational Requirements
- Assign, Detail, and Prescribe Duties of Individual Service Members

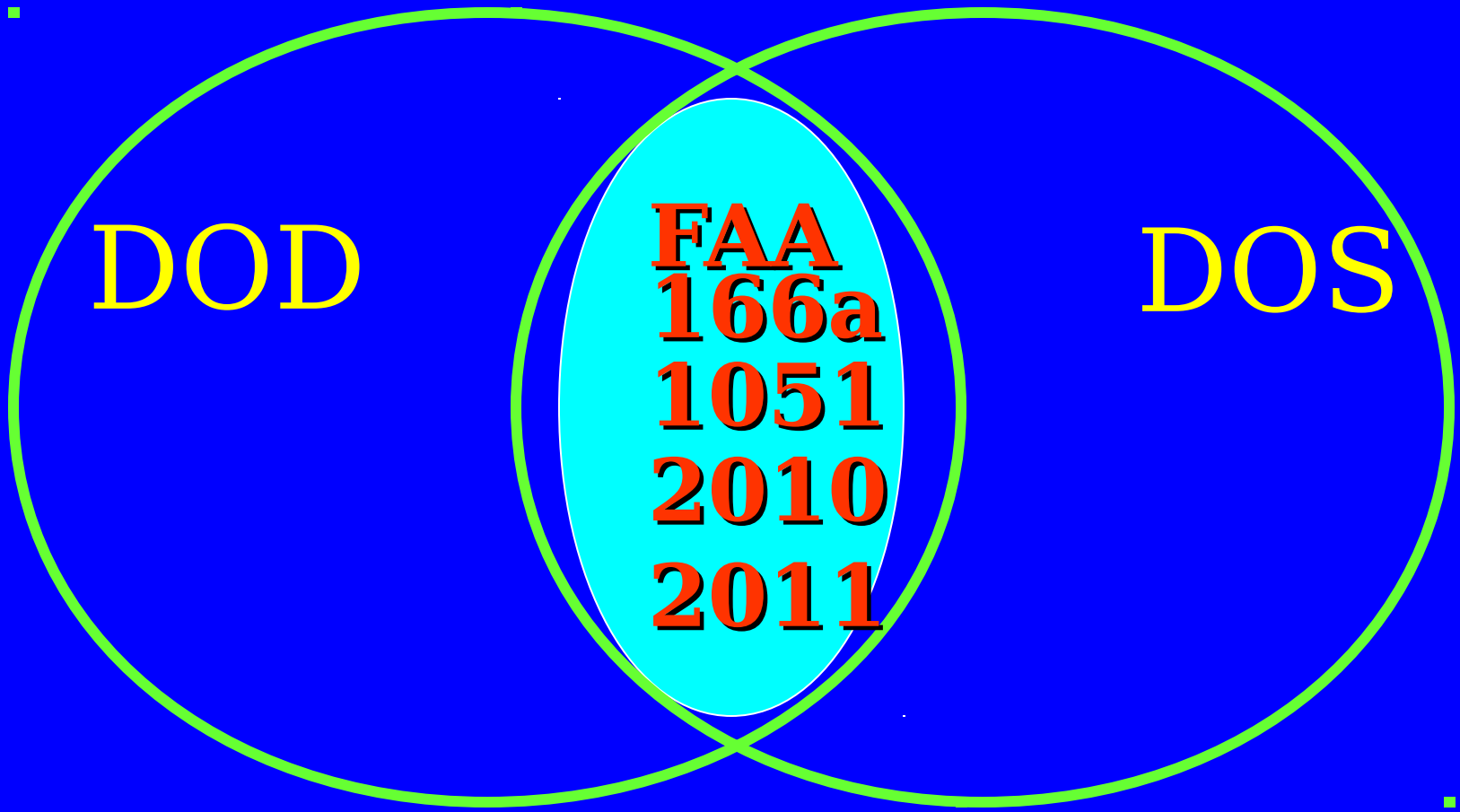
THE FUNDING SPECTRUM IN CURRENT OPERATIONS

- War
- Peacekeeping Ops -- MNF or UN?
- Joint/Combined Training
- Counter-Drug Missions
- Humanitarian Operations
- Foreign Disaster Relief
- Security Assistance/ Foreign Aid

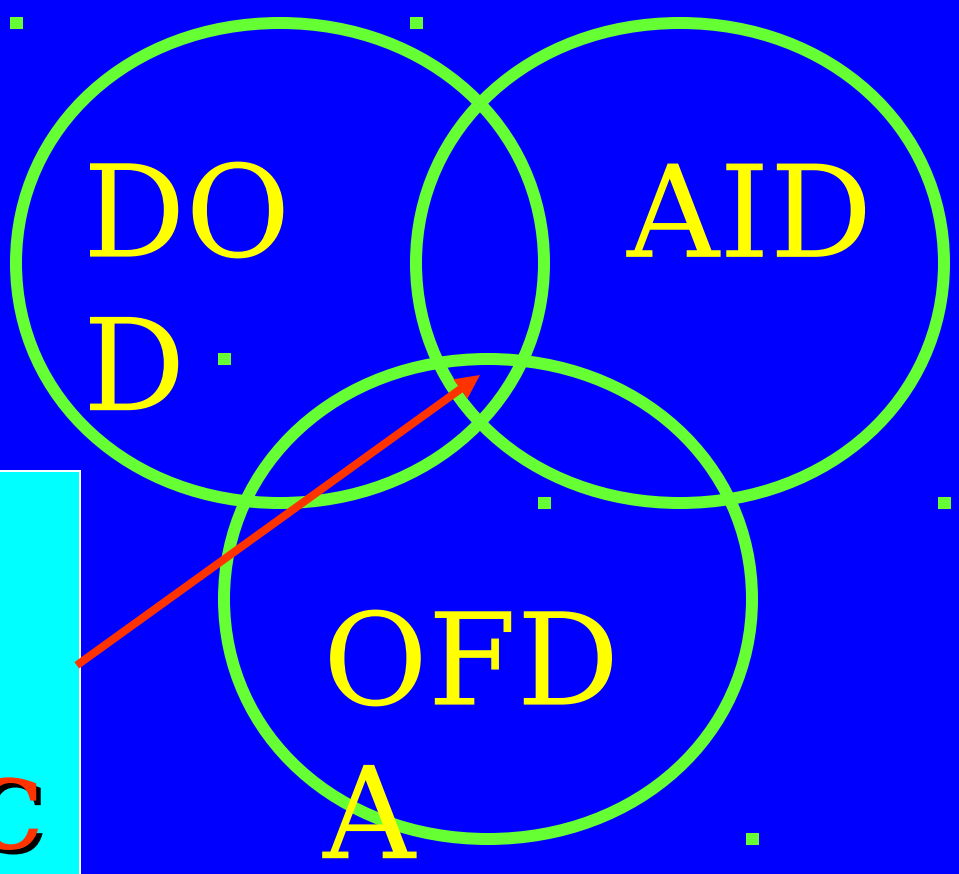
ROLE REVERSAL?

- Department of Defense
- Department of State
  - Foreign Assistance
  - US AID
  - OFDA

ROLE OVERLAP?
(Foreign Assistance)



ROLE OVERLAP?
(Disaster Relief/HA)

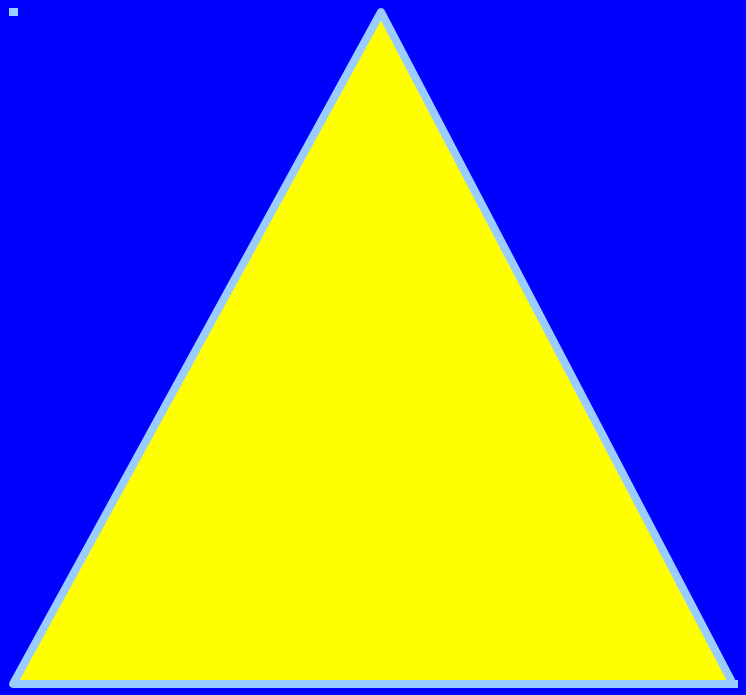


FAA
401
2551
QHDACA

THE LEGAL FRAMEWORK

- Purpose Statute - 31 USC 1301(a)
- Establish the Purpose for the Particular Expenditure
- Look for Specific Legislative Authority - *United States v. MacCollom*
- Add'l Authority - Rely on Inherent (Art II) Authority to Conduct Military Mission?
- *Query: What about "non-traditional military missions"* ?

Operational Funding Triangle



Operational Funding Tetrahedron

SUPPORTING MULTILATERAL PEACE OPERATIONS

- **Three Key Authorities:**
  - **The UN Participation Act (UNPA)**
  - **Drawdowns**
  - **Section 607 of the FAA**

SUPPORTING MULTILATERAL PEACE OPERATIONS

- **UN Participation Act**
  - **People (Ch. 6 but not 7)**
  - **Stuff**
  - **Reimbursement?**

SUPPORTING MULTILATERAL PEACE OPERATIONS

- **UN Participation Act -- Requirement for Reimbursement**
  - **"Helms-Biden" -- Section 10 of UNPA**
  - **Waiver**
  - **Exceptions -- $3M/Operation/Year**
  - **Applies to ALL Covered Assistance**

SUPPORTING MULTILATERAL PEACE OPERATIONS

- **Drawdowns (Big Business!)**
  - **FAA 506(a)(1)**
  - **FAA 506(a)(2)**
  - **FAA 552(c)(2)**

SUPPORTING MULTILATERAL PEACE OPERATIONS

- **Drawdowns -- FAA 506(a)(1)**
  - **$100M/Year -- DOD**
  - **Unforeseen Emergency/Immediate Military Assistance**
  - **Foreign Country or IO**

SUPPORTING MULTILATERAL PEACE OPERATIONS

- **Drawdowns -- FAA 506(a)(2)**
  - **$200M/Year -- $75M from DOD**
  - **Counterdrug/Disaster Relief**
  - **New: Antiterrorism/Non-Proliferation**
  - **Foreign Country/IO**

SUPPORTING MULTILATERAL PEACE OPERATIONS

- **Drawdowns -- FAA 552(c)(2)**
  - **$25M/Year -- Any Agency**
  - **Peacekeeping/National Interest**
  - **Foreign Country/IO**

SUPPORT TO MULTILATERAL OPERATIONS (cont'd)

- **Reimbursable Support**
  - **607 Agreements**
  - **FAA Section 632**
  - **EDA; FAA Section 516**
  - **FMS**
  - **ACSAs**

SUPPORT TO MULTILATERAL OPERATIONS (cont'd)

- **ACSA**
  - **LSSS -- 10 USC 2350**
  - **Not for Routine/Recurrent Requirements**
  - **Types of Transactions:**
    - **Cash**
    - **Replacement in Kind**
    - **Equal Value Exchange**

Humanitarian Assistance By U.S. Military Forces

- Humanitarian & Civic Assistance "HCA"
- Humanitarian Demining "HD"
- Transportation of Relief Supplies
- Excess Equipment
- Humanitarian Assistanc

Funding DoD Humanitarian Activities

- O&M
  - 10 USC § 401
  - "Budgeted" pot of O&M
- Overseas Humanitarian, Disaster Assistance and Civic Aid (OHDACA)
    - Separate Approp. FY 01: $55.9M

Humanitarian & Civic Assistance

- 10 USC § 401, HCA
  - Three types
    - Preplanned
    - Demining
    - De Minimis

Humanitarian & Civic Assistance

- Preplanned
  - Only to countries approved by SECDEF
  - Must promote the security interests of both US and HN
  - Must promote the specific operational skills of the unit involved

Humanitarian & Civic Assistance

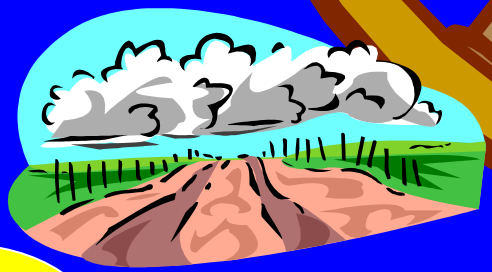
- Preplanned (cont.)
  - Must serve basic economic and social needs of the people involved
  - Must compliment, and not duplicate other forms of assistance
  - Must not be provided to paramilitary or military units or individuals

Humanitarian & Civic Assistance

- Preplanned (cont.)
  - Expenses as a "direct result"
    - Travel, Transportation, & Subsistence of the DoD personnel involved
    - Equipment, Services and Supplies, including small-team landmine clearing equipment
  - Congressional reporting requirement

Humanitarian & Civic Assistance

- Preplanned (Cont.)
  - Rudimentary surface transportation systems
  - Well drilling & basic sanitation facilities
  - Rudimentary construction/repair of public facilities (schools, hospitals)
  - Medical & Dental readiness exercises



SCHOOL

Humanitarian Demining "HD"

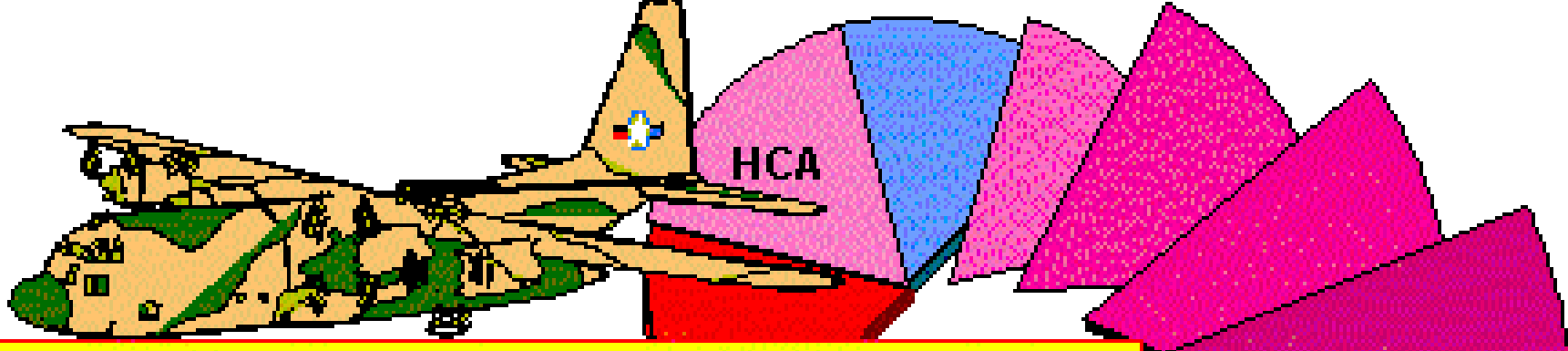
- Demining:
  - Funded by OHDACA
  - US Forces train HN forces
    - May directly benefit HN Military Forces
  - May transfer equipment and supplies
    - Leave supplies at HCA site?

De Minimis HCA

- *De Minimis* HCA:
  - Unplanned target of opportunity
  - Must be in conjunction with an operation
  - O&M funded by unit, not HCA or OHDACA
  - Rule of thumb

Humanitarian Assistance "HA"

- 10 USC § 2551
  - Provide transportation and *other Humanitarian Assistance*
  - Funded from ODHACA
- § 401 HCA v. § 2551 HA
  - If the project fits under § 401, must use § 401, if not, and its for a humanitarian purpose, it's § 2551 HA



ACTIVITIES PERFORMED BY:

HUMANITARIAN & CIVIC ASSIST

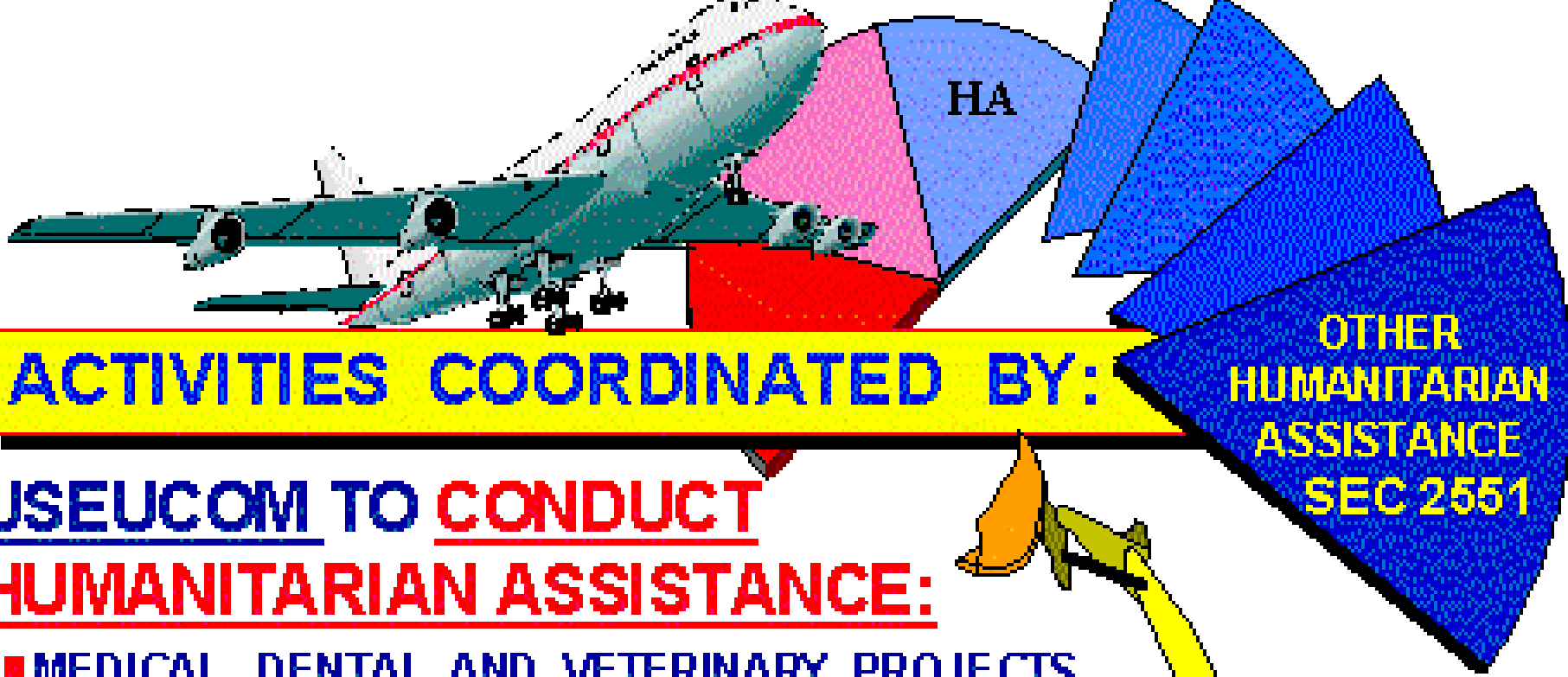
SEC 401

U.S. MILITARY UNITS WHILE DEPLOYED OVERSEAS FOR TRAINING, EXERCISES OR OPERATIONS INCLUDING:

- BASIC SANITATION FACILITIES
- SURFACE TRANSPORTATION SYSTEMS
- CONSTRUCTION AND REPAIR OF PUBLIC FACILITIES
- WELL DRILLING
- MEDICAL, DENTAL AND VETERINARY

FUNDS: ONLY COVER INCREMENTAL COSTS OF CONSUMABLES AND SERVICES FOR HCA PROJECT

as Exercise "ADD-ONs"



ACTIVITIES COORDINATED BY:

USEUCOM TO CONDUCT HUMANITARIAN ASSISTANCE:

- MEDICAL, DENTAL AND VETERINARY PROJECTS
- ENGINEERING CMC ACTION PROJECTS
- CONSTRUCTION AND REPAIR OF PUBLIC FACILITIES
- WELL DRILLING
- MEDICAL READINESS TRAINING

FUNDS: COVER ALL COST REQUIRED TO CONDUCT PROJECT

NEW FY 97

as "STAND-ALONE" Projects

HUMANITARIAN OPERATIONS

- **Transportation of Humanitarian Goods**
  - **Space Available, under 10 USC § 402**

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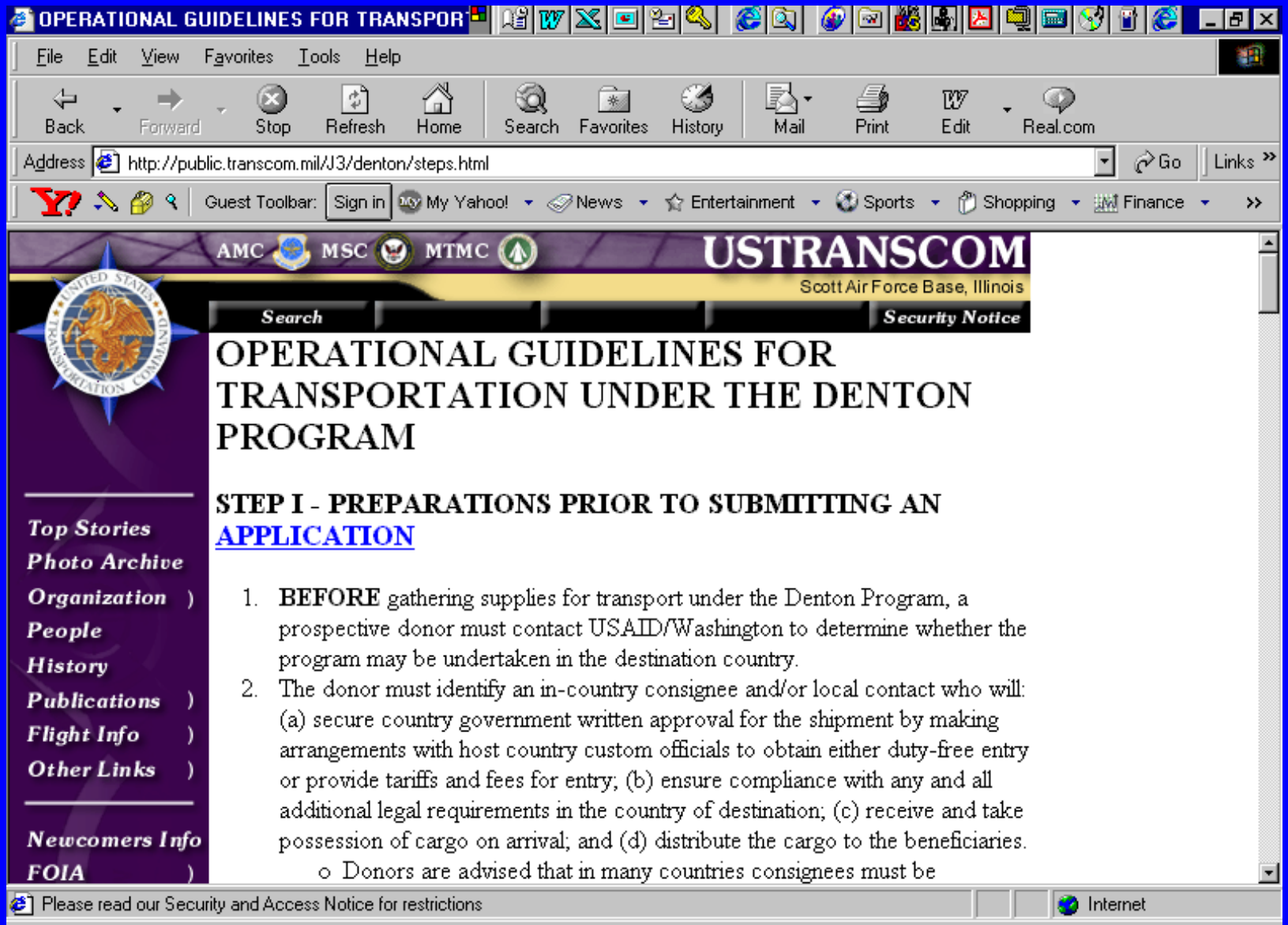
TRANSCOM § 402


OPERATIONAL GUIDELINES FOR TRANSPOR
File Edit View Favorites Tools Help
Back Forward Stop Refresh Home Search Favorites History Mail Print Edit Real.com
Address http://public.transcom.mil/J3/denton/steps.html
Go Links
Guest Toolbar: Sign in My Yahoo! News Entertainment Sports Shopping Finance
AMC MSC MTMC
USTRANSCOM
Scott Air Force Base, Illinois
Search
Security Notice
Top Stories
Photo Archive
Organization
People
History
Publications
Flight Info
Other Links
Newcomers Info
FOIA
OPERATIONAL GUIDELINES FOR TRANSPORTATION UNDER THE DENTON PROGRAM
STEP I - PREPARATIONS PRIOR TO SUBMITTING AN APPLICATION
1. BEFORE gathering supplies for transport under the Denton Program, a prospective donor must contact USAID/Washington to determine whether the program may be undertaken in the destination country.
2. The donor must identify an in-country consignee and/or local contact who will: (a) secure country government written approval for the shipment by making arrangements with host country custom officials to obtain either duty-free entry or provide tariffs and fees for entry; (b) ensure compliance with any and all additional legal requirements in the country of destination; (c) receive and take possession of cargo on arrival; and (d) distribute the cargo to the beneficiaries.
o Donors are advised that in many countries consignees must be
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Humanitarian Assistance Space Positive Transportation

U.S. Air Force personnel unload relief supplies destined for earthquake victims in India from a C-5A Galaxy at Andersen

Excess Supplies

- **10 USC § 2547, Excess Supplies**
  - **Excess; non-lethal, non-real property humanitarian supplies**
  - **Transfer to DoS, No authority to transfer to HN**

SPECIAL AUTHORITIES

- CINC Initiative Funds
  - 10 USC 166a; $25M FY01
  - Training and operations
  - Humanitarian & Civil Assistance
  - Bilateral Military contacts
- Emergency and Extraordinary Expenses

Exercises
(Logistics Support)

- FMS
- ACSA
- 10 USC 2010
- CIF

Exercises
(Logistics Support)

- 10 USC 2010 ("DCCEP")
  - Criteria
  - Pay "Incremental Expenses" of Foreign Participants

Conferences & Seminars

- 10 USC 1051
- 10 USC 1050
- CIF

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Conferences & Seminars

- 10 USC 1051
  - Pay Expenses of Foreign Participants
  - Limited to Travel in AOR?

Training Foreign Forces

- **FMS**
  - **Exercises?**
  - **Safety, Interoperability, Familiarization**
- **JCET (10 USC 2011)**
- **Drawdown**
- **CIF**
- **OHDACA?**
- **Human Rights Vetting**

JCET
(10 USC 2011)

- SOF Training Exception
- Friendly Foreign Forces
- Incremental Expenses
- DOD Policy -- Pay With MFP-11

Human Rights Vetting?

None of the funds made available by this Act may be used to support any training program involving a unit of the security forces of a foreign country if the [SECDEF] has received credible information from the [DoS] that the unit has committed a gross violation of human rights, unless all necessary corrective steps have been taken.

Sec. 8092, FY 01 Defense Approps

SECTION 8070 NOTIFICATION

- Notice Requirement
- Included Activities
- Excluded Activities
- Compliance

Disaster Relief (Foreign)

- Immediate, Emergency Response?
- 10 USC 2551 (OHDACA)
- Drawdown (506(a)(2))

Disaster Relief (Domestic)

- Immediate, Emergency Response?
- Stafford Act/FEMA Lead
- Reimbursement?

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Conclusion